

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

|                          |   |                     |
|--------------------------|---|---------------------|
| SUN OPTICS, INC.,        | ) |                     |
|                          | ) |                     |
| Plaintiff,               | ) |                     |
|                          | ) |                     |
| v.                       | ) | C.A. No. 07-137-SLR |
|                          | ) |                     |
| FGX INTERNATIONAL, INC., | ) |                     |
|                          | ) |                     |
| Defendant.               | ) |                     |

**MOTION TO STRIKE**

FGX International, Inc. ("FGX"), through its undersigned counsel, and pursuant to District of Delaware Local Rule 7.1.3, hereby moves (the "Motion") the Court for an order striking portions of Sun Optics, Inc.'s Reply In Support Of Motion For Leave To File Evidence Arising After Oral Arguments In Support Of Plaintiff's Motions For Preliminary Injunction (D.I. 52, the "Reply Brief") and the Declaration of Bruce Raile (D.I. 53) in the above-captioned action.

The grounds for this Motion are set forth more fully in FGX's Memorandum of Law in Support of Defendant's Motion to Strike, filed contemporaneously herewith. FGX has made the requisite showing for the granting of its Motion. Specifically, FGX has shown that plaintiff Sun Optics Inc. has raised for the first time in its Reply Brief matters that should have been included in a full and fair opening brief.

WHEREFORE, FGX respectfully requests that the Court (i) grant its Motion to Strike, and (ii) grant such other and further relief as the Court may deem just and proper.

Dated: Wilmington, Delaware  
August 1, 2007

**GREENBERG TRAURIG, LLP**




Donald J. Detweiler (I.D. #3087)  
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*Attorneys for FGX International, Inc.*

**STATEMENT PURSUANT TO LOCAL RULE 7.1.1**

I, Donald J. Detweiler, Esq., an attorney for Defendant FGX International, Inc. hereby state that the parties attempted to reach an agreement on the matters set forth in Defendant's Motion To Strike. Specifically, on July 30, 2007, Adam Landa, Esq. sent a letter via e-mail to counsel for plaintiff, Larry R. Laycock (llaycock@wnlaw.com), and sought plaintiff's consent to the relief sought in the motion. Mr. Laycock called Mr. Landa in response, and advised Mr. Landa that plaintiff did not consent.

Date: August 1, 2007



Donald J. Detweiler (I.D. #3087)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SUN OPTICS INC.,

Plaintiff,

v.

FGX INTERNATIONAL INC.,

Defendant.

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)

C.A. No. 07-137-SLR

**CERTIFICATE OF SERVICE**

I, Donald J. Detweiler, being duly sworn according to law, deposes and says that I am employed by Greenberg Traurig, LLP, which is counsel for FGX International, Inc. and hereby certify that on the 19th day of July 2007, I caused copies of the following to be served upon the parties listed below in the manner indicated.

- Motion to Strike
- Memorandum of Law in Support of Motion to Strike

**Via Hand Delivery**

R. Eric Hutz, Esq.  
Connolly Bove Lodge & Hutz, LLP  
The Nemours Building  
1007 North Orange Street  
Wilmington, Delaware 19801

**Via U.S. Mail**

Chad E. Nydegger  
Larry R. Laycock  
Workman Nydegger  
1000 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, UT 84111

Dated: August 1, 2007

**GREENBERG TRAURIG, LLP**



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| FGX INTERNATIONAL, INC., | ) |                     |
|                          | ) |                     |
| Defendant.               | ) |                     |

**ORDER**

This matter having come before the Court upon consideration of the defendant FGX International, Inc.'s Motion To Strike (the "Motion"), notice of the Motion having been served upon the plaintiff, Sun Optics Inc.; and, after due deliberation and sufficient cause appearing therefor, it is HEREBY,

ORDERED that the Motion is Granted; and it is further

ORDERED that the Declaration of Bruce Raile (D.I. 53) is stricken from the record, and the portions of plaintiff Sun Optics Inc.'s Reply In Support Of Motion For Leave To File Evidence Arising After Oral Arguments In Support Of Plaintiff's Motions For Preliminary Injunction (D.I. 52) is stricken from the record in accordance with Exhibit 1 to FGX's Memorandum Of Law In Support Of Defendant's Motion To Strike.

Dated: \_\_\_\_\_, 2007

\_\_\_\_\_  
Honorable Sue L. Robinson  
Chief Judge, United States District Court